

Idaho, a Republican, to stop funding for delayed notice searches authorized under section 213. The size of the vote took the Department by surprise, and it immediately set out to defend the provision aggressively. Clearly, this is a power that DOJ does not want to lose.

I raised concern about the sneak and peek provision when it was included in the Patriot Act and even considered offering an amendment at that time to strip it out. I did not believe there had been adequate study and analysis of the justifications for these searches and the potential safeguards that might be included. I did not argue then, however, and I am not arguing now that there should be no delayed notice searches at all and that the provision should be repealed. I do believe, however, that it should be modified to protect against abuse. My bill will do four things to accomplish this.

First, my bill would narrow the circumstances in which a delayed notice warrant can be granted to the following: potential loss of life, flight from prosecution, or destruction or tampering with evidence. The "catch-all provision" in section 213, allowing a secret search when serving the warrant would "seriously jeopardize an investigation or unduly delay a trial" is too easily susceptible to abuse.

Second, I believe that any delayed notice warrant should provide for a specific and limited time period within which notice must be given—7 days. This is consistent with some of the pre-PATRIOT Act court decisions and will help to bring this provision in closer accord with the fourth amendment to the Constitution. Under my bill, prosecutors will be permitted to seek 7-day extensions if circumstances continue to warrant that the subject not be made aware of the search. But the default should be a week, unless a court is convinced that more time should be permitted.

Third, Section 213 should be brought into the group of PATRIOT Act provisions that will sunset at the end of 2005. This will allow Congress to reexamine this provision along with the other provisions of the act, which was passed within 6 weeks of the 9/11 attacks, to determine if the balance between civil liberties and law enforcement has been correctly struck.

Finally, the bill requires a public report on the number of times that section 213 is used and the number of times that extensions are sought beyond the 7-day notice period. This information will help the public and Congress evaluate the need for this authority and determine whether it should be retained or modified after the sunset.

These are reasonable and moderate changes to the law. They do not gut the provision. They do not make it worthless. They do recognize the growing and legitimate concern from across the political spectrum that this provision was passed in haste and presents the potential for abuse. They also send

a message that fourth amendment rights have meaning and potential violations of those rights should be minimized if at all possible. I urge my colleagues to support this bill and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1701

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reasonable Notice and Search Act".

SEC. 2. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

Section 3103a of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "may have an adverse result (as defined in section 2705)" and inserting "will endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant"; and

(B) in paragraph (3), by striking "a reasonable period" and all that follows and inserting "7 calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to 7 calendar days each if the court finds, for each application, reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant."; and

(2) by adding at the end the following:

"(c) REPORTS.—

"(1) IN GENERAL.—On a semiannual basis, the Attorney General shall transmit to Congress and make public a report concerning all requests for delays of notice, and for extensions of delays of notice, with respect to warrants under subsection (b).

"(2) CONTENTS.—Each report under paragraph (1) shall include, with respect to the preceding 6-month period—

"(A) the total number of requests for delays of notice with respect to warrants under subsection (b);

"(B) the total number of such requests granted or denied; and

"(C) for each request for delayed notice that was granted, the total number of applications for extensions of the delay of notice and the total number of such extensions granted or denied."

SEC. 3. SUNSET ON DELAYED NOTICE AUTHORITY.

(a) PATRIOT ACT.—Section 224(a) of the USA PATRIOT Act of 2001 (Public Law 107-56; 115 Stat. 295) is amended by striking "213,".

(b) AMENDMENTS.—The amendments made by this Act shall sunset as provided in section 224 of the USA PATRIOT Act of 2001.

By Mr. SMITH (for himself, Mr. GRAHAM of Florida, Mrs. BOXER, Mr. CHAFEE, Mr. CORZINE, and Mr. WYDEN):

S. 1702. A bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employ-

ees, and for other purposes; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to speak about the need for consistent tax treatment of employer-provided health insurance for domestic partners. Today, Senator BOB GRAHAM and I are introducing the Domestic Partner Health Benefits Equity Act, a bill that seeks to simplify the tax code and address the growing trend among both public and private employers who have decided to provide domestic partner benefits to their employees.

More than one-third of Fortune 500 companies, as well as numerous State and local governments, are providing health insurance benefits to the domestic partners of their employees. This is a clear trend in the American workplace. However, Federal tax law has not kept pace with corporate changes in this area and employers who offer such benefits and the employees who receive them are taxed inequitably. Our legislation would provide consistent tax treatment for employer-provided health insurance for domestic partners.

Currently, the tax code provides that the employer's contribution of the premium for health insurance for an employee's spouse is excluded from the employee's taxable income. An employer's contribution for the domestic partner's coverage, however, is included in an employee's taxable income as a fringe benefit. In addition, the employer's payroll tax liability is increased. This forces businesses to create a two-track payroll system for benefits provided to spouses and those provided to domestic partners, an administrative burden that this legislation would eliminate.

I believe that by passing this legislation and changing current law, we will increase the number of Americans covered by health insurance by providing employers with a tax incentive. The tax code should not penalize employers for offering these benefits to their employees.

I urge my colleagues to join me and support the Domestic Partner Health Benefits Equity Act. I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1702

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Domestic Partner Health Benefits Equity Act".

SEC. 2. EXTENSION OF EXCLUSION FOR AMOUNTS RECEIVED BY AN EMPLOYEE THROUGH ACCIDENT OR HEALTH INSURANCE AS REIMBURSEMENT FOR EXPENSES FOR MEDICAL CARE.

(a) IN GENERAL.—Section 105(b) of the Internal Revenue Code of 1986 (relating to amounts expended for medical care) is amended—

(1) by striking "Except in the case" and inserting the following: